IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1232 OF 1999

1. Kishorilal Ramnath Dhoot

2. Smt. Archana Kamlesh Dhoot
Both R/o Mangeshi near Hotel
Panchali, Padampura Aurangabad
both as directors of
Dhoot Chemo Plast Pvt. Ltd
A-14/1, MIDC Industrial Area
Chikalthana, Aurangabad. ..Applicants.

V/s

1. Roots and Herbs Pvt. Ltd.
Office at 1/23, Laxminarayan Park
Koregaon road, Pune-411001
through its Managing Director,
Mr. K.K. Jhunjhunwala,
R/o 66/9, Koregaon Park,
Pune-411001

2. A.M. Bhambere
Finance Secretary of
accused Company. ..Respondents.

Mr. R.F. Totla, with Mr. Anilkumar Patil Advocate for the applicants.

Mr. Shailandra Aglawe, advocate for respodnent No.1

CORAM : J.H. BHATIA, J.
DATE : 26TH APRIL, 2007.

ORAL JUDGMENT

. This is an application filed under section 482 Cr.P.C. seeking to quash the criminal proceeding in Reg. Criminal case No.245/1997 pending before J.M.F.C., Pune and registered on the basis of the complaint lodged by responded No.1.

2. To state in brief, the respondent No.1/ complainant filed the complaint under section 138 of Negotiable Instrument Act against Dhoot Chemo Plast Pvt. Ltd., its two Directors and Finance Secretary. It was contended that the present applicants are the Directors and Executives of the Company carrying on the business in the name and style "Dhoot Chemo Plast Pvt. Ltd." The accused required the complainant to advance the loan of Rs. 15 Lakh with collateral security. As per the terms and conditions of the loan, the complainant had advanced the loan by two Demand Drafts, one of Rs. 10 Lakh and another of Rs.5 Lakh.The Demand Drafts were received by the Finance Secretary of the company, who was accused No.3. Out of the said amount, on 11/4/1997 the accused repaid amount of Rs. 5 lakh by a Demand Draft and for the balance amount of Rs. 10 Lakh the accused issued a cheque against its account with United Western Bank Ltd. on 3/4/1997. The cheque was presented by the complainant with its Banker, Union Bank of India, on 1/8/1997 for clearance. However, the cheque was returned with the remarks "referred to drawer". This was informed to the complainant on 5/8/1997. The complainant threatened to take legal action and

therefore, the accused agreed to settle the payments and issued another cheque dated 12/8/1997 for the amount of Rs. 10,38,407/-. This cheque was deposited by the complainant on 13/8/1997. The cheque was dishonoured on 20/8/1997. In para 6 of the complaint it is mentioned that it was deposited on 8/9/1997 and was dishonoured on 11/9/1997. Thus there are two dates of presentation and two dates of dishonour of the cheque. According to the complainant, on 24/9/1997 notice was issued by Registered Post A.D. and it was actually served on the accused on 3/10/1997. However they failed to make payment within stipulated period of 15 days in spite of service of notice. Therefore, the complainant filed the complaint on 18/11/1997. The verification statement of K.K. Jhunjhumwala, the Director of the complainant Company was recorded on 15/12/1997. On the basis of the same, the process was issued against the accused persons.

3. The accused Company Dhoot Chemo Plast Pvt.Ltd. filed a Revision Application No. 285/1998 before the Sessions Judge, Pune through its two Directors, who are the present applicants, challenging the issuance of process. After hearing the parties that revision

application was rejected by the learned Additional Sessions Judge on 12/1/1999. Thereafter the present petitioners filed this application under section 482 Cr.P.C. seeking to quash the proceeding. It is contended that in the complaint, only the company Dhoot Chemo Plast Pvt. Ltd. is shown as accused through the petitioner Nos. 1 and 2 being the Directors and respondent No.2 being the Finance Secretary. It is contended that the present petitioners and respondent No.2 were not shown as accused and in spite of that process was issued against them. It is contended that the notice issued to the petitioners was not valid, legal and proper, because it did not disclose the cheque number, which was allegedly dishonoured. It is contended that it was necessary, because more than one blank cheques were handed over to the complainant. It is further contended that the process could not have been issued against the petitioner and respondent No.2 unless it is averred in the complaint that these three persons were liable in their individual capacity. It is further contended that the cheque was dishonoured on 20/8/1997, while as per the contents of the complaint, the notice was issued on 24/9/1997 i.e. beyond the period of 15 days and therefore, it was not a valid

notice. It is contended that the complaint was typed but certain additions appear to have been made later on about the later dates of presentation and dishonour of the cheque. It is contended that in view of all these circumstances, the learned Magistrate committed error in issuing process against the present petitioner and therefore, the proceeding against them is liable to be set aside.

4. Heard Mr. Totla, learned Counsel for the petitioners and Mr. Shailendra Agalawe, learned Counsel for respondent No.1. Mr. Totla learned Counsel for the petitioners referred to number of authorities from the Supreme Court and this High Court in support of his contentions. The learned Counsel for respondent No.1 vehemently contended that the petitioners had previously filed revision application before the Sessions Court and after rejection of that revision application they have filed this application under section 482 of Cr.P.C. and in fact this is second revision application in the garb of application under section 482 Cr.P.C. and it is not tenable under the law. Mr. Totla, however, contended that revision application No. 285/1998 was filed by the Company and not by the present petitioners. After

perusal of the judgment and particularly title of the Criminal Revision Application No. 285/1998, it becomes clear that application was field in the name of Dhoot Chemo Plast Pvt. Ltd. through its Director Kishorilal Dhoot and Smt. Archana Kamlesh Dhoot, who are the present petitioners. It appears that the title of the revision application was prepared on the basis of the title of the complaint but for all purposes that revision application was filed by the present petitioners though in the name of the company. It is not that somebody had filed earlier revision application to which the present applicants were not parties and, therefore, they could not be held bound by the out come of the earlier revision application. I have no doubt that the earlier revision application NO. 285/1998 was in fact filed by the present petitioners and after rejection of that application, they have come to this Court.

5. Mr. Totla contended that if the High Court on examination of the record finds that there is gross miscarriage of justice, or abuse of process of the Court or the required statutory procedure has not been complied with or there is failure of justice or order

passed or sentence imposed by the Magistrate requires correction, the High Court has inherent powers and in the appropriate case, even revisional power under section 397(1) r/w section 401 of the Code to rectify the same. For this he placed reliance upon **Krishnan and another V.Krishnaveni and another, 1997 All MR. (Cri) 651.**, wherein in para 10 the Supreme Court observed as follows:-

> "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person-accused/complainant-cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High court under section 482 of the Code since it may amount to circumvention of the provisions of S.397(3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under section 483 of the code. So when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under section 397(1) r/w section 401 of the code. As stated earlier, it may be

> exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings."

In view of the provisions of section 397(3) Cr.P.C., it is clear that if an application for revision has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them. In the present case as pointed out above the present petitioner had previously filed revision application before the Sessions Court, though in the name of the company, and that revision application has been already rejected. Therefore, under section 397(3) they are not entitled to file second revision application. However, by virtue of the powers under section 397(1), this Court has suo motu powers of revision to rectify the mistake, if found that there has been grave miscarriage of justice, or abuse of the process of the Court or that there is failure of justice etc. Under section 482 Cr.P.C. this Court has also got inherent powers to make such orders as may be necessary to give effect to the order of the Court or to prevent abuse of the process of any Courts or otherwise to secure the ends of justice. As the petitioners have filed the application under section 482 Cr.P.C. they

will have to satisfy this Court that it is necessary for this Court to pass some orders to prevent the abuse of the process issued by the Magistrate or otherwise to secure the ends of justice. In paragraph 8 of the judgment in **Krishnan V. Krishnaveni (Supra)** the Supreme Court clearly laid down that High Court has under Section 397 r/w section 401 Sou Motu revision powers and under Section 483 continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet ends of justice and in addition it has also inherent powers under section 482 Cr.P.C. However, as Their Lordships observed, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1)) Cr.P.C. Keeping this legal position in mind, the contentions made in the present petition will have to be considered.

6. Mr. Totla, learned Counsel for the petitioner relied upon **Zuari Cement Ltd. & others V/s Prabhat Agencies, 2005(2) Bom. C.R. (Cri) 678** in support of his contention that the complaint was filed only against the company and not against the present petitioner and

that the name of the present petitioner was shown only to represent the company. The title of the company is as follows:-

"Roots & Herbs (I) Pvt. Ltd., a Company registered under the Company Act, having its registered office at 1/23 Laxminarayan Park, Koregaon Road, Pune-411001, through its Managing Director Mr. K.K. Jhunjhunwala, Age--years, Occupation-Business, Residing at 66/9, Koregaon Park, Pune-411001 ....Complainant.

V/s

Dhoot Chemo Plast Pvt. Ltd., a Company registered under the Companies Act having its registered office at A-14/1 MIDC Industrial Area, Chikalthana Aurangabad-431210, through its Directors:

1. Shri Kishorilal R. Dhoot, Adult, Occ-Business.
2. Smt.Archana Kamlesh Dhoot, Adult, Occ-Business.

Both residing at Mangirish, Near Hotel Panchavati, Padampura, Aurangabad-431001 and

3. Mr. A.M. Bhambere, Adult, Occ-Business, Finance Secretary of Company ...Accused"

He contends that if the title is read it become clear that Dhoot Chemo Plast Pvt. Ltd., the company, was the only accused and the company was to be represented by its Directors and Finance Secretary, who were shown as Nos. 1,2 and 3 respectively. It appears that in **Zuary Cement Ltd and Others** also title of the complaint was almost similar and taking into consideration the contents of the complaint and allegations made therein,

this Court held that the complaint was only against the company and not against its Directors. However, if the facts of that case are carefully read it becomes clear that according to the complainant his cheque book was lost and he was shocked when he came to know that the accused company had presented six cheques from that cheque book for payment to Goa Urban Co-Operative Bank Ltd. It was alleged by the complainant that he did not owe any amount to the accused company in respect of any debt or liability and the attempt to encash the cheque was made by the acucsed/company. The attempts were made by accused/company to encash said cheques and it constituted offence under section 379, 403 and 407 IPC. Taking into consideration the nature of the offence of theft, misappropriation etc. made against the company, the learned Judge was justified in holding that the complaint was against the company only and the two directors were only representative of the company because there was no personal allegations against them. It is settled position that nobody can be vicariously held liable for criminal act of another person except where section 34 or 149 of Indian Penal code may be applicable.

7. In my opinion, the facts of the present case are totally different and authority in **Zuari Cement Ltd. (Supra)** does not come to rescue of the present petitioner. In paragraph 1 of the complaint in his case the sentence reads thus: "The accused are the Directors and Executives of the Company carrying the business under the name and style of Dhoot Chemo Plast Pvt. Ltd. at the address given above." In paragraph 2 it was mentioned that "the accused desired to enhance their business and therefore they were in need of financial assistance. The accused required the complainant to advance the loan of Rs. 15 lakhs with collateral security." In para 4 it was stated that "the accused issued the cheque bearing No. 337457." From these averments made in the complaint it is clear that the present petitioners themselves were accused and their names were not shown just to represent the company.

8. Section 141(1) Negotiable Instrument Act reads as follows:-

> " S.141. Offence by Companies.-(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the

> offence and shall be liable to be proceeded against and punished accordingly."

From this, it is clear that when the offence under section 138 is committed by a Company, every person, who at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of the business of the company, as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. In view of this provision it is clear that when the offence is committed, the persons who are responsible to the company for the conduct of the business, are also liable to be prosecuted and punished. Such provision was not available in the complaint lodged by the complainant in **Zuari Cement Ltd.** In view of the specific provisions under section 141 of Negotiable Instrument Act, the Directors, who are personally responsible for carrying the business of the company, are equally liable to be prosecuted and punished.

9. Mr. Totla further contended that in the present case, verification was not properly recorded and therefore, on this count itself the prosecution is

liable to be quashed. In support of his contention he placed reliance upon **M/s Nova Electricals, Jalgaon Vs. State of Maharashtra & Anr. 2006 All MR(Cri.) 2456**, wherein this Court had held that recording of verification of statement is not a mere formality and it has to be recorded by the Court because the object of verification is to discourage frivolous proceeding. The said judgment reveals that verification statement was not recorded and without that the process was issued. In spite of this, this High Court felt that for the omission of recording of verification the complainant cannot be penalised and therefore, the trial Court was directed to proceed from the stage of verification again. This authority also does not help the petitioners because in the present case verification statement of one K.K. Jhunjhunwala, Director of the complainant company, was recorded and after that the process was issued.

10. Mr. Totla further contended that statutory notice issued by the complainant itself was barred by limitation as it was about more than 15 days after the cheque was dishonoured. For this purpose, he relied upon the contents of the complaint, which were typed.

In para 6 it was typed that on 12/8/1997 cheque bearing No. 337458 for the amount of Rs. 10,38,407/- was issued by accused and it was deposited on the request of the accused on 13/8/1997. The cheque was also dishonoured on 20/8/1997 with memo of bank ’Not arranged for’. After this typed statement there was hand written statement, which reads " it was deposited on 8/9/1997 and it’s dishonour on 11/9/1997". In paragraph 8 of the complaint it was mentioned that, the legal notice was issued on 24/9/1997 and it was received by the accused on 3/10/1997. In the verification statement however, there is no mention about the presentation of the cheque on 8/9/1997 and it’s dishonour on 11/9/1997. Mr. Totla contended that the hand written portion at the end of para 6 must have been added later on and should, therefore, be ignored. According to him, in the typed portion of paragraph 6, it was clear that the cheque was dishonoured on 20/8/1997 and same fact was stated in verification statement also. According to him while the cheque was dishonoured on 20/8/1997, the notice was issued on 24/9/1997. As such it was clearly beyond period of 15 days from the date of dishonour. If a cheque is dishonoured once, it does not debar or prohibit the holder of cheque to present the cheque

again. If the handwritten portion in paragraph 6 is taken into consideration, it appears that the cheque was presented twice, firstly on 13/8/1997 and secondly on 8/9/1997 and was dishonoured on 11/9/1997. In fact by this, he gave one more opportunity to the accused to see that the cheque was honoured. He would not present the cheque again, notice dated 24/9/1997 would be clearly barred by limitation. As he presented the cheque again, the period of limitation will begin from the date when it was dishonoured again. While taking this view, I am supported by number of authorities from different High Courts, the Supreme Court and this High Court also. For the sake of brevity only some of those cases may be referred here **(1) M/s Sayed Rasool &Sons, and others Vs. M/s Aildas & Company 1992 CRI L.J. 4048 (2) M/s S.K.D. Lakshmanan Fireworks Industries and another Vs. K.V. Sivarama Krishnan and another 1995 CRI. L.J. (3) 1993 CRI L.J. 680 Bombay (4) Central Bank of India Another V. Saxons Farms and others (1999) 8 S.C.C. 221 T**hus, it is well settled legal position that there is **no** restriction regarding number of times the cheque can be presented and that on every subsequent presentation and dishonour there arose the fresh cause of action for filing the complaint and the period of sending the

notice is to be reckoned from the date of receipt of the intimation of bank about dishonour on the last presentation and on the basis of this the complaint is maintainable. In view of this, if the cheque was presented on 8/9/1997, the notice was within limitation as it was within 15 days from the date of its last dishonour. However, it is the fact that in the verification statement there is no reference to the presentation of the cheque and its dishonour second time. This is a question of fact which can be looked into at the time of trial. It may be noted here that at the time of arguments before this Court, the learned Counsel for the respondent complainant produced the Xerox copy of the said cheque as well as intimation about it's presentation dated 8/9/1997. It is not clear on what date the intimation was actually received by the company. However, the question of fact which can be looked into at the time of trial and if it is found that the notice was issued beyond 15 days after the intimation was received by the complainant, he will have to face the consequences. This being a question of fact merely on this count process cannot be quashed at this stage.

11. Mr. Totla contended that in the complaint nowhere it is mentioned that the present petitioners were in-charge of and were responsible to the company for the conduct and business and therefore they cannot be held guilty in view of the provisions of section 141 of Negotiable Instruction Act. According to him, merely being the Directors of the company by itself does not make them liable for being prosecuted for dishonour of the cheque and in support of this contention he placed reliance upon **Madanlala Taparia & Anr. V. Bank of Rajasthan Ltd. & Anr., 2005 All MR (Cri) 956.**, **Suman Madanlal Bora Vs. State of Maharashtra & Others, 2000(1) Bom. C.R. (Cri) 243, as well as Sabhita Ramamurthy & Anr Vs. Channabasavaradhya AIR 2006 S.C. 3086**. In Sabhita Ramamurthy, the Supreme Court observed in paragraph 7 as follows:-

> "A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provisions, a person although is not personally liable for commission of such an offence would

> be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Not only the averments made in paragraph 7 of the complaint petitions does not meet the said statutory requirements, the sworn statement of the witness made by the son of Respondent herein, does not contain any statement that Appellants were in charge of the business of the company. In a case where the Court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance of the statutory requirements. In terms of Section 200 of the Code of Criminal Procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise, mala fide, the court may direct registration of case against complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view."

12. In **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another (2005) 8 Supreme Court Cases 89**, three Judges Bench of the Supreme Court had occasion to consider the different aspects and function of section 141 of Negotiable Instrument Act. Following questions

quoted in paragraph 1 were referred to the three Judges Bench of the Supreme Court for determination:

> "(a) Whether for purposes of section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.
>
> (b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.
>
> (c) Even if it is held that the specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of the business could be proceeded against."

After considering several authorities, Their Lordships answered these questions in paragraph 19, which reads as follows:

> "(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

> (b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.
>
> (c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

From this it is clear that it is necessary to specifically aver in the complaint under section 141 of Negotiable Instruction Act that at the time the offence was committed the person-accused was in-charge of and responsible for the conduct of the business of the company. Merely because a person was a Director of the company, he would not be deemed to in-charge of and

responsible to the company for conduct of the business and therefore, cannot be deemed to be guilty for the offence unless he proves contrary and lastly even if there is no specific averment, the Managing Director or the Joint Managing Director would be admittedly in-charge of the company and responsible to the company for the conduct of its business by virtue of the position they held. It is also made clear by the Supreme Court that so far as Signatory of the cheque is concerned he is clearly responsible, for the incriminating act would be covered under section 141 (2) of Negotiable Instruction Act.

12. In the light of this legal position settled by the Supreme Court, we have to see the facts of the present case. Xerox copy of the cheque was produced by the learned Counsel for the company during the argument before this Court. Signature on that cheque tallies with the signature of the petitioner no.1 Kishorilal Dhoot on this petition itself and it may be noted that the petitioners have nowhere denied that the said cheque was signed and issued by petitioner no.1. As such, being a signatory of the cheque, he is responsible. Besides in first paragraph of the complaint it is

mentioned that "the accused are Directors and Executive of the Company carrying the business under the name and style of Dhoot Chemo Plast Pvt.Ltd." In this para the complainant has not merely averred that the petitioners are the Directors but he has also averred that they are Executive of the Company carrying the business. Now question is what is the meaning of Executive. In Concise Oxford Dictionary, (Eleventh Edition at page 498) Executive is defined "as a person with senior managerial responsibility in a business and Executive Officer is defined as a Officer with Executive powers." In the New Webster's Dictionary Executive is denied as "a person or body charged with administrative work". As per Black's Law Dictionary, Sixth Edition, Term Executive also refers upper level management of business. As per the averments in paragraph 1 the petitioners were not only Directors but also the Executive of the Company carrying the business. In view of the definition, when the director is also executive, he is an officer with executive powers, charged with administrative work and is person with senior managerial responsibility in the business. It is not necessary that in the complaint the words under section 141 of Negotiable Instrument Act should be verbatim quoted.

The purpose would be served if the averments, by whatever words used, makes it clear that the person was in-charge of and was responsible to the company for the conduct of the business of the company. In view of the averments in paragraph 1 of the complaint and the fact that the cheque was actually signed by the petitioner No.1, it must be held that the complainant has made necessary averments in the complaint to show that the present petitioners were in charge and were responsible for the business of the company. Therefore, no fault can be found on this count.

13. In para 5 of the application the applicants have contended that the notice issued by the complainant is not valid, legal and proper, because it does not disclose the cheque number, which was alleged to have been dishonoured. However, I find no substance in this contention in view of the contents of the notice, particularly para 8 and 9 of the said notice, which clearly reveal that firstly for payment of balance amount of Rs.10 lakh a cheque No. 337457 was issued by the Company against its Account No.353 with United Western Bank and that cheque was dishonoured. Thereafter the complainant approached the accused and on

12/8/1997 another cheque of Rs. 10,38,407 was issued. That cheque was dishonoured. In view of this, the notice is very clear. Merely because the cheque number of the second cheque issued on 12/8/1997 is not mentioned in the notice, it cannot be said that the notice was not valid.

14. In view of the facts and circumstances and legal position discussed above, I find no substance in the present application. By issuance of process against the petitions, no miscarriage of justice was caused. In fact the petitioners tried to file second revision application in the garb of application under section 482 Cr.P.C. There was no material to show that any miscarriage of justice or abuse of process was caused by the impugned order. The complaint was filed in 1998 and for last about 9 years the matter could not be proceeded because of repeated revision applications filed by the petitioner. Therefore, the petition is liable to be dismissed with some costs.

15. The application stands dismissed with costs of Rs. 5000/- to be paid by the petitioners to the respondent No.1 within one month.

(J.H. BHATIA, J.)